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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS CUVA,

Plaintiff,

No. CIV S-11-1400 KJM CKD PS

vs.

WELLS FARGO BANK, N.A., et al.,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____ /

This case, in which plaintiffs are proceeding pro se, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1). On May 27, 2011, defendant filed a motion to dismiss and motion to strike. The motions were noticed to be heard on July 13, 2011.

On July 1, 2011, because plaintiffs had not filed either an opposition or a statement of non-opposition to the motions, the court continued the hearing on the motions to August 17, 2011; ordered plaintiffs to show cause, in writing, no later than August 3, 2011, why sanctions should not be imposed for failure to timely file an opposition or a statement of non-opposition to the pending motions; and directed plaintiffs to file an opposition to the motions, or a statement of non-opposition thereto, no later than August 3, 2011. The court further stated that “[f]ailure of plaintiff to file an opposition will be deemed a statement of non-opposition to the

1 pending motion, and may result in a recommendation that this action be dismissed for lack of
2 prosecution. See Fed. R. Civ. P. 41(b).” Id.

3 Although the deadlines have now passed, the court docket reflects that plaintiffs
4 have not filed a response to the order to show cause, an opposition to the motions, or a statement
5 of non-opposition to the motions. In light of plaintiffs’ failures, the undersigned will recommend
6 that this action be dismissed for failure to prosecute the action and for failure to comply with
7 court orders and Local Rules, and that defendant’s motions to dismiss and to strike be denied as
8 moot. See Fed. R. Civ. P. 41(b); L.R. 110.

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. The hearing date of August 31, 2011, on defendant’s motions to dismiss and to
11 strike, is vacated; and

12 IT IS HEREBY RECOMMENDED that:

13 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b),
14 based on plaintiffs’ failure to prosecute the action and to comply with court orders and Local
15 Rules;

16 2. Defendant’s motions to dismiss and to strike (dkt. nos. 7, 8) be denied as moot;
17 and

18 3. The Clerk of Court be directed to close this case.

19 These findings and recommendations are submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
21 days after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. Such a document should be captioned
23 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections

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1 within the specified time may waive the right to appeal the District Court's order. Martinez v.
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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Dated: August 8, 2011


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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